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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3489 of 1994

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

ASHABEN KISHORBHAI MAKWANA

Versus

STATE OF GUJARAT AND ANOTHER

Appearance:

MR YS LAKHANI for Petitioner

MS. S.D.Talati Asstt. G.P. for Respondent No. 1

DS AFF.NOT FILED (N) for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 12/03/98

ORAL JUDGEMENT

Under order dated 3rd August, 1991, made by the Chief Town Planner, Ahmedabad the petitioner herein was appointed as a clerk on compassionate grounds. In view of the petitioner's appointment as a clerk, under the relevant rules, she was required to undergo pre-service

training and post training examination. Such examination was required to be passed by her within three trials. It appears that the petitioner took post training examination in the months of March, 1993, August, 1993 and January, 1994. She, however, failed to pass the said examination even at the third trial. The petitioner, apprehending that in view of her failure to pass the post training examination, her service would be terminated, has approached this court by filing this petition. The only question that is raised in this petition is that the petitioner having been appointed on compassionate grounds, she is entitled to additional chance to pass the post training examination and until she avails such additional chance, her service cannot be terminated.

2. By an order made on 11th March, 1994, the petition was admitted to final hearing and by way of ad-interim order, the respondents are restrained from terminating the services of the petitioner on the ground of failure to pass the pre-service training examination till one more trial is permitted.

3. One Mr. D.M. Desai, Administrative Officer, Town Planning and Valuation Department, Gandhinagar has made an affidavit on 10th December, 1997. It is stated that the petitioner had been permitted to avail additional trial at the post training examination in the month of October, 1996 and she has failed to pass the said examination even at the 4th trial (i.e. at the additional trial). In my view, present petition preferred under an apprehension is not maintainable. Besides, the question whether a clerk who fails to pass the post training examination within three trials can be discharged from service on account of such failure even if he/she is appointed on compassionate grounds is no more res-integra. The question has been concluded against such clerk under the unreported judgment of this Court (Coram: Mr. Justice S.M. Soni) in Special Civil Application NO. 2791 of 1994 decided on 23rd September, 1994 followed by the judgment of this Court in the matter of Bharatkumar Shivabhai Jadav versus Dy. District Development Officer (Special Civil Application No. 6650 of 1995 and cognate matters) dated 8th July, 1996 (Coram: Mr. Justice R.K. Abichandani).

4. In view of the above referred legal position of law, the petitioner has no right to continue in service in spite of her failure to pass the post training examination within the stipulated chances. Petition is, therefore, dismissed. Rule is discharged. Interim relief granted earlier is vacated. There shall be no order as to costs.

Vyas